IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 13TH SEPTEMBER 2007 / 22ND BHADRA 1929

WP(C).No. 10710 of 2007(Y)

PETITIONER:

UNNIMOIDU KARUTHEDATH, S/O. MOHAMMED,
KARUTHEDATH HOUSE, VELUR POST, POOKKOTTUR VILLAGE,
MALAPPURAM DISTRICT.

BY ADV. SRI.ARIKKAT VIJAYAN MENON
SRI.HARISANKAR V. MENON

RESPONDENTS:

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1. COMMERCIAL TAX OFFICER,
MANJERI.

2. ABOOBACKER NOORANMOOCHI,
S/O. AHAMMED, MOYIKKAL HOUSE, VELUR POST,
POOKKOTTUR, ERNADU TALUK, MALAPPURAM DITSRICT.

3. MOYINKUTTY NOORANMOOCHI, S/O. MOHAMMED,
KUNNUMPURAM HOUSE, VELUR POST, POOKKOTTUR,
ERNADU TALUK, MALAPPURAM DISTRICT.

4. DEPUTY TAHSILDAR (R.R.),
TALUK OFFICE, ERNAD.

5. STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT, TAXES DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

R1, R4 & R5 BY GOVERNMENT PLEADER SRI. C.K. GOVINDAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 COPY OF THE PARTNERSHIP DEED WITH THE PETITIONER AND ABDUL NAZER PICHAN DATED 20.11.2002

EXT.P2 TRUE COPY OF THE PARTNERSHIP DEED AFTER RETIRING FROM THE BUSINESS DATED 24.1.2003

EXT.P3 COPY OF MANUFACTURING, TRADING PROFIT AND LOSS ACCOUNT OF PARTNERSHIP FIRM DATED 24.1.2003

EXT.P4 COPY OF COMPLAINT LODGED BY THE FIRST RESPONDENT AGAINST THE PETITIONER DATED 20.8.2004

EXT.P5 COPY OF THE NOTICE ISSUED BY THE 4TH RESPONDENT IN FORM 10 FOR THE YEAR 2002-03 DATED 18.8.2004

EXT.P6 COPY OF THE NOTICE ISSUED BY 4TH RESPONDENT IN FORM 1 FOR THE YEAR 2002-03 DATED 18.8.2004

EXT.P7 COPY OF NOTICE ISSUED BY 4TH RESPONDENT IN FORM 10 FOR THE YEAR 2003-04 DATED 18.8.2004

EXT.P8 COPY OF SNOTICE ISSUED BY 4TH RESPONDENT IN FORM 1 FOR THE YEAR 2002-03 DATED 18.8.2004

EXT.P9 COPY OF REPLY FILED BEFORE THE 1ST RESPONDENT BY THE PETITIONER DATED 29.12.2005

EXT.P10 COPY OF ASSESSMENT ORDER FOR THE YEAR 2002-03 ISSUED BY THE FIRST RESPONDENT DATED 21.11.2006

EXST.P11 COPY OF THE ASSESSMENT ORDER FOR THE YEAR 2003-04 ISSUED BY THE FIRST RESPONDENT DATED 20.11.2006

RESPONDENTS' EXHIBITS: NIL.

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

W.P.C. NO. 10710 OF 2007

Dated this the 13th day of September, 2007

JUDGMENT

The only claim of the petitioner is that petitioner retired from the firm and intimated the same in Form No.III to the assessing officer on 24.1.2003, which is admitted by respondents. Therefore recovery cannot be made against the petitioner as partner of the firm in terms of Section 21 of the KGST Act and is permissible only for demands due for 2002-03. If arrears could be recovered from the Firm and continuing partners then there is no need for proceeding against the petitioner. However, petitioner can be proceeded against for recovery of arrears due from the Firm upto 24.1.2003. The Assessing Officer is directed to bifurcate the liability if required after making separate assessment for 2002-03 and advise for recovery against the petitioner, if arrears are not paid by the Firm. Petitioner will be given a copy of communication for him to make payment, failing which recovery can be continued.

W.P. is disposed of as above.

(C.N.RAMACHANDRAN NAIR)
Judge